

**Appellate Authority & Chief ... vs Shri K.Thaksinamurthy on 7
December, 2010**

Madras High Court

DATED : 07.12.2010

CORAM :

THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

W.P.No.7703 of 2010

and M.P.No.1 and 2 of 2010

1. Appellate Authority & Chief General Manager

State Bank of India,

Local Head Office

Chennai- 600 006.

2. Central Public Information Officer &

General Manager (Network-2)

Local Head Office

Chennai-600 006 .. Petitioners

V.

1. Shri K.Thaksinamurthy

2. Central Information Commissioner,
Government of India,
Minister of Personnel, Public Grievance & Pensions
(Department of Personnel and Training)
New Delhi. .. Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records relating to the order dated 18.03.2010 in the file No.CIC/SM/A/2009/000640 dated 23.04.2008 of the Central Information Commissioner, Government of India, Ministry of Personnel, Public Grievances and Pensions (Dept of Personnel and Training), New Delhi and to quash the same. For Petitioner : M/s.K.Sankaran

For Respondents : M/s.G.Ethirajulu for R1

ORDER

The writ petition is filed against the order of the 2nd respondent/Central Information Commission dated 18.3.2010 in the file No.CIC/SM/A/2009/000640 dated 23.04.2008 and to quash the same.

2. The 1st respondent herein made an application to the Deputy General Manager who is designated as Central Public Information Officer calling for the documents relating to disciplinary proceedings in respect of the 1st respondent as well as 14 other Bank officials during 1996-1998. The application was considered and rejected by the Central Public

Information Officer on the ground the information sought has no public interest and is an unwarranted invasion into the privacy of 3rd parties and is exempted under section 8(i)(j) of the Right to Information Act [herein after referred to as "Act"]. The order of the Central Information Commissioner is challenged by way of appeal before the Chief General Manager/Appellate authority by the 1st respondent. The appellate authority also confirmed the order of the original authority on the same ground and rejected the appeal and the correctness of the order of the appellate authority was challenged before the 2nd respondent/2nd appellate authority. The 2nd respondent herein ordered the application as prayed for and directed the Central Information Officer to provide the photocopies of charge sheet, reply to the charge sheet and the final order passed by the disciplinary authority in respect of each of the 14 officer listed in the application on the ground that the information sought for would not come under the exemption clause and the proceedings are instituted in the public interest for the alleged misconduct of the employees and the records are generated by the public authority and after the proceedings are over, all such records can be disclosed. The correctness and validity of the order is challenged in this writ petition.

3. It is contended by the learned counsel for the petitioner that the order impugned herein is passed by the 2nd respondent/Central Information Commissioner by overlooking the fact that the disclosure of the information sought for is likely to invade the privacy of the 14 employees and is exempted from disclosure u/s.8(i)(j) of the Act and the order is in violation of the mandatory requirement u/s.19(4) of the Act in and under which the 2nd respondent is before passing any order bound to give notice to the 14 employees to whom the information sought for related, as such the order is illegal irregular and is contrary to the procedure laid down under law and is in violation of the principles of natural justice.

4. Whereas it is contended by the learned counsel for the 1st respondent that the writ petitioner is being the lower authorities are bound by the order of the 2nd respondent and have no locus-standi to maintain any writ petition against the order impugned herein.

5. I have heard the rival submissions made on both sides.

6. Before going into the issue involved herein on merits the first aspect to be considered is the maintainability of the writ petition. It is true that the writ petition is filed by Chief General Manager and General Manager of Head office at Chennai who are also designated as appellate authority and Central Public Information Officer respectively whose orders are challenged before and reversed by the 2nd respondent herein. However, it is sought to be argued by the learned counsel for the petitioner that the writ petition is filed by the Chief General Manager and General Manager representing State Bank of India where the bank officials in respect of whom disclosure of information sought for are employed and the State bank officials from where the information is sought for also happen to be the original and appellate authority hence are described herein by their other designation in addition to official designation.

7. The learned counsel for the petitioners has further contended, that the bank being the legal entity is to be represented by some official who are entrusted with and responsible for the affairs of the company and as the Chief General Manager and General Manager are the administrative heads of the head office of the bank from where the information is sought for, they are entitled to maintain the writ petition. It is also argued that as the direction is issued to the 2nd petitioner/General Manager-Chief Public Information Officer both in his capacity as General Manager and Chief Public Information Officer the petitioner has locus standi to maintain the present writ petition against the enforceability of the order

failure of compliance of which is likely to resulting criminal liability against the official concerned who is responsible for such failure.

8. This court finds considerable force in such argument advanced on the side of the petitioners and the objection regarding the locus standi of the petitioners to maintain the writ petition is hence rejected.

9. On merits, two grounds are raised against the validity and enforceability of the order of the 2nd respondent. However, this court, is first inclined to consider the ground regarding the violation of mandatory requirement as laid down under section 19(4) of the Act. For the purpose of proper understanding sec.19(4) and 19(10) are extracted here under : Act 19(4) : If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information, of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party. 19(10) : The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

10. It cannot be denied that the disclosure of information sought for is about the disciplinary proceedings initiated against 14 bank officials. The disclosure of information sought for are the charge sheet, reply given by the employees and the final order passed by the authorities concerned in the disciplinary proceedings initiated against them, as such the information sought for particularly, the reply submitted by the employees relates to information of 3rd party, the 2nd respondent herein is u/s.19(10) of the Act bound to decide the appeal in accordance with the procedure, laid down only after giving due opportunity to such third parties for being heard where as the 2nd respondent disposed of the appeal without complying with such statutory requirement as admittedly the third parties are deprived of such opportunity as such

the impugned order is passed contrary to the procedure and is in violation of the principles of natural justice as contemplated u/s.19(4) of the Act. On this score alone the impugned order is liable to be set aside.

K.B.K.VASUKI, J

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11. In the result, the order of the 2nd respondent is set aside and the matter is remanded back to the 2nd respondent for fresh disposal after giving due opportunity to all the 14 employees/bank officials for being personally heard. The whole exercise shall be completed within three months from the date of receipt of the copy of this order. Consequently, connected miscellaneous applications are closed. No costs. 07.12.2010

Internet : Yes/No

Index : Yes/No

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To

1. Central Information Commissioner,

Government of India,

Minister of Personnel, Public Grievance & Pensions

(Department of Personnel and Training)

New Delhi.

order in W.P.No.7703 of 2010

